

Serial No.: 10/776,845
Attorney Docket No. 8S08.1-190

REMARKS

The Office Action mailed July 11, 2005 has been received and reviewed. By the present Response and Amendment, Claims 5 and 13 are amended, and Claims 4 and 12 are cancelled. Currently pending are claims 1-3, 5-11, 13-17, and 19-20. No new matter is introduced. All claims are now believed to be in condition for allowance for the reasons set forth below.

Claim Rejections Under 35. U.S.C. §112

Claims 4, 5, 12, and 13 were rejected by the Examiner as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse this rejection. Nevertheless, to advance prosecution, Applicants have cancelled Claims 4 and 12 and have amended Claims 5 and 13 to clarify what is claimed. Accordingly, Applicants believe that Claims 5 and 13 are allowable and requests the Examiner to withdraw this rejection.

Claim Rejections Under 35 U.S.C. §102

Claims 1-17, 19, and 20 were rejected by the Examiner under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent Number 5,971,104 of Woller. Applicants respectfully traverse this rejection.

Claims 1-3, 5-11, 13-17, and 19-20 (as Applicants have cancelled Claims 4 and 12) are not anticipated by U.S. Patent Number 5,971,104 of Woller. Independent Claim 1 recites, in part, a foot engaging member comprising "a rigid tail portion having a curved elongate body and extending away from the mounting portion" (emphasis added). Claim 8 recites a climbing tree stand assembly having "a pair of rigid footholds attached to the platform or the support arms and extending generally over the platform" (emphasis added). Claim 14 recites a "pair of rigid foothold devices attached to the platform or the support arms" (emphasis added). Applicants note that all claims have limitations regarding a rigid structure for the foot engaging member or foothold.

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On the other hand, U.S. Patent Number 5,971,104 of Woller discloses a pair of stiff, flexible straps, which are not rigid, for providing the outdoorsman a mechanism to manipulate the foot-support assembly. Apparently, the Examiner's position is that the word "rigid" is synonymous with the word "stiff". The Examiner's position is obviously not sustainable. The Examiner provided the Applicants with a dictionary definition of the word "rigid" as meaning "appearing stiff and unyielding" (Webster's 10th edition, emphasis added). It appears that the Examiner is simply ignoring the second part of the definition of rigid in that not only are rigid devices stiff, but they are also unyielding. For example, a man's shirt collar is stiff in that the collar can stand up under its own weight, but no one would consider a man's shirt collar to be rigid. If some amount of force is applied to the shirt collar, it will yield and deform. Thus, a man's shirt collar is stiff, but it is certainly not rigid. Similarly, the flexible straps of U.S. Patent Number 5,971,104 of Woller are stiff, but they are not rigid. U.S. Patent Number 5,971,104 of Woller discloses "two or more flexible tensile members such as straps fashioned from woven fabric webs 34, each web having an end looped around the corresponding seat hook 32" (Col. 5, line 6 et al.). Moreover, "The straps may be fashioned from suitable, conventional nylon web material. One-inch wide nylon webbing is preferred since it has a stiffness that causes the strap to stand up presenting a loop for the outdoorsman." (Col. 7, lines 41-44). Thus, the straps of U.S. Patent Number 5,971,104 of Woller are stiff, but they are not rigid because the straps will yield and deform if force is applied to them, just like a man's shirt collar.

To the contrary, the foothold devices of the present application are both stiff and unyielding when force is applied, and are thus rigid, which is not disclosed, taught, or suggested by U.S. Patent Number 5,971,104 of Woller. Thus, Claims 1, 8, and 14 are not anticipated by U.S. Patent Number 5,971,104. Accordingly, allowance of Claims 1, 8, and 14 is respectfully requested.

Because dependent Claims 2-3, 5-7, 9-11, 13, 15-17, and 19-20 include patentably distinct elements and limitations of their own and incorporate the limitations of Claims 1, 8, and 14 these dependent claims are allowable for at least the reasons set forth above for the corresponding independent claim. Thus, Claims 2-3, 5-7, 9-11, 13, 15-17, and 19-20 are also allowable. Accordingly, allowance of Claims 2-3, 5-7, 9-11, 13, 15-17, and 19-20

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is respectfully requested.

Applicants respectfully urge the Examiner to reconsider his position and allow the claims. Applicants have filed herewith a Notice of Appeal and intend to appeal the Examiner's rejections if reconsideration is denied.

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CONCLUSION

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, Applicant earnestly solicits early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone Applicant's undersigned attorney at 770.984.2300.

Respectfully submitted,



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